CLAIRE B. LEVY, LLC

EX PARTE OR LATE FILED

December 8, 1999

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Canyon Area Residents for the Environment Request for Review of Action Taken Under Delegated Authority on a Petition for an Environmental Impact Statement, Docket No. 99-

Dear Secretary:

I am herewith filing an original and one copy of this letter to serve as disclosure of ex parte oral presentations made by the undersigned on behalf of Jefferson County, Colorado in the above captioned matter.

On December 7, 1999, I held meetings with the following individuals: Roy Stewart and his staff, Helgi Walker, Tom Powers, David Goodfriend, Rosallyn Allen, and Richi Chessen. Accompanying me at these meetings was James R. Hobson, Scott Albertson and Deb Carney.

The discussions concerned the Petition of Lake Cedar Group LLC for Expedited Special Relief and Declaratory Ruling. My remarks summarized the comments contained in a document previously filed with the Office of the Secretary entitled "Initial Comments of the County of Jefferson, Colorado in Opposition to Lake Cedar Group's Petition for Expedited Special Relief and Declaratory Ruling." We also generally discussed addressing the goals of the FCC by having the FCC urge the parties to mediate the issues. No agreement was reached concerning whether to do so.

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Sincerely,

Claire Levy

Claire B. Levy

Cc: Roy Stewart
Helgi Walker
Tom Powers
David Goodfriend
Rich Chessen

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Canyon Area Residents for the Environment	)	__ Docket No. 99-
Request for Review of Action Taken Under	)	
Delegated Authority on a Petition for	)	
An Environmental Impact Statement	)	

INITIAL COMMENTS OF THE COUNTY OF JEFFERSON, COLORADO IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING

Lake Cedar Group LLC and each of its members have filed a petition for expedited special relief and declaratory ruling in which they request that the Federal Communications Commission ("the Commission") preempt the zoning decision of the Board of County Commissioners of Jefferson County, Colorado. Jefferson County hereby responds by requesting the Commission not to act on the Lake Cedar Group petition for the reasons set forth below.[1]

I. FEDERAL ACTION IS NOT WARRANTED

Lake Cedar Group has presented two bases for its Petition for Expedited Special Review. The first is that the actions of Jefferson County interfere with the federal objective of implementing digital television service. The second is that Jefferson County's rezoning decision is not supported by substantial evidence and was therefore

[1] If the Petition is scheduled for public comment, Jefferson County will submit more extensive comments at that time.

arbitrary and capricious. Neither of these bases justifies federal preemption of a local land use decision.

A. Federal Preemption is Neither Necessary or Appropriate to Correct Local Land Use Decisions.

The Lake Cedar Group Petition devotes thirteen pages to the argument that the decision of the Board of County Commissioners of Jefferson County ("the County Commissioners") is not supported by the evidence in the record. (Petition, pp. 13-22; 29-31) This is essentially an argument that federal agencies should function in the role of an appellate court to correct faulty decisions made by local officials.

Judicial process is available in state court to seek review of a local zoning decision on the grounds that it was arbitrary, capricious or an abuse of discretion. In Colorado, such an action is brought pursuant to Colorado Rule of Civil Procedure 106(a)(4). (A copy of C.R.C.P. 106 is attached hereto as Appendix 1.) Rule 106(a)(4) provides for a review on the record to determine whether a governmental body or lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion. Review is limited to the record before the lower body, hence no discovery is allowed.

Lake Cedar Group has filed a Complaint in District Court stating two Claims for Relief. The First Claim for Relief alleges that the County Commissioners abused their discretion and/or exceeded their jurisdiction by denying their rezoning application. The Second Claim for Relief seeks declaratory relief on the grounds that the Jefferson County Zoning Regulations are overly broad and vague, thereby violating Lake Cedar Group's due process rights. (Complaint of Lake Cedar Group attached as Appendix 2.) The administrative record is due in District Court on January 14, 2000. Pursuant to C.R.C.P.

106(a)(4)(VII), their opening brief is due within forty days thereafter. Jefferson County's answer brief is due within thirty days after service of Lake Cedar Group's opening brief. After the petitioner files a reply brief, if any, the case is ready for a decision.

The judicial process established in Colorado is the appropriate means to review a quasi judicial decision of a local government on the grounds that the decision is not based on adequate evidence in the record. Since discovery and pretrial motions are not involved, judicial relief can be had expeditiously and well within the timeframe by which federal action could be taken pursuant to notice and comment.

Lake Cedar Group seeks to establish a dangerous and far reaching precedent of federal intervention to preempt not only local land use authority, but also to preempt the role of the judicial system in reviewing and correcting those decisions if necessary. Federal agencies should not usurp the role of the courts to review and correct potentially unlawful local decisions. The fact that the decision of the County Commissioners may have been wrong, arguendo, does not justify federal action.

B. Petitioner's Argument for Preemption is Not Based on Any Adopted Legal Standard.

Lake Cedar Group argues that preemption is necessary because the County Commissioners' decision is not the product of "reasoned decision making." This argument is based on a standard for zoning decisions that does not apply. Moreover, even if the standard does apply, the argument is based on an erroneous interpretation of that standard.

Under Colorado law, a zoning decision must be based on competent evidence in the record. Ford Leasing Development Co. v. Board of County Commissioners, 186 Colo. 418, 528 P.2d 237 (1974). On review under C.R.C.P. 106(a)(4), the decision must

be upheld if there is "any competent evidence" to support it. Bauer v. City of Wheat Ridge, 182 Colo. 324, 513 P.2d 203 (1973). Opinions expressed by lay members of the public can be relied on as competent evidence in the record. Western Paving Construction Co. v. Jefferson County Board of County Comm'rs, 689 P.2d 703 (Colo. App. 1984)

Lake Cedar Group assumes that the standard set forth in the Telecommunications Act of 1996 for personal wireless communication services applies to broadcast towers, and then misconstrues that standard. Section 704 of the Telecommunications Act requires zoning decisions for personal wireless service facilities to be supported by "substantial evidence" and requires the zoning decision to be in writing. 47 U.S.C. §332(c)(7)(B)(iii). This standard was adopted for personal wireless service facilities after considerable congressional debate on whether to interfere with local zoning authority. Congress has not applied this or any other standard to local zoning decisions for television broadcast towers. In the absence of such legislation, the validity of a local decision must be determined by state courts applying state law. While Lake Cedar Group may not like the standard applied by Colorado law, it cannot seek preemption simply because that standard may lead to an unfavorable outcome in court.

Even if the requirements of Section 704 were applicable, the County Commissioners' written resolution would be upheld. The standard adopted in Section 704 does not require extensive findings of fact and conclusions of law, as is suggested by Lake Cedar Group. See e.g. AT&T Wireless PCS, Inc. v. City Council of the City of Virginia Beach, 155 F.3d 423, 429-30 (4th Cir. 1998). It requires the decision to be in writing so that it can be subject to judicial review. A decision of the County

Commissioners that denied approval for a personal wireless service tower that contained similar types of findings and conclusions was upheld in District Court in Sprint Spectrum, LP v. Board of County Commissioners, 59 F. Supp. 2d 1101 (D. Colo. 1999).

Lake Cedar Group dismisses the entire body of evidence before the County Commissioners as being "vague concerns and unfounded fears," and argues that it does not constitute "substantial evidence" to support the decision. (Petition, page 29) The administrative record has not yet been compiled and has not been submitted to the Federal Communications Commission for review. Even if the "substantial evidence" standard were applicable to this case, the Federal Communications Commission cannot preempt a local land use decision without having before it the entire administrative record.

C. Federal Action Should Not Be Taken to Remedy Petitioner's Own Delay.

The Telecommunications Act of 1996 authorized the transition to digital television. The Federal Communications Commission adopted its policies and rules for implementation of digital television in its Fifth Report and Order issued on April 3, 1997. This was the culmination of proceedings that were begun in 1987, when inquiry was first made into the potential for "advanced TV." (See Fourth Report and Order, Docket No. 87-268, ¶4.)

Jefferson County began to lay the ground-work for the transition to digital television by updating its Telecommunications Land Use Plan and Zoning Resolution. Discussions commenced in 1991, and regulations were formally adopted in 1993. Representatives of the members of Lake Cedar Group participated in that process. Lake Cedar Group's primary local counsel, Tom Ragonetti, attended stakeholder's meetings,

testified at County Commissioner hearings, and submitted numerous proposed language changes for the zoning regulations.

Lake Cedar Group approached Jefferson County with the idea of a joint broadcast tower on Lookout Mountain five years later, in early 1997 when its representatives met with then County Commissioner John Stone. Lake Cedar Group did not file an application for the necessary and acknowledged rezoning approval until over a year and a half later, in July of 1998, by which time Commissioner Stone had decided not to seek reelection as a County Commissioner. The application was not ready for public hearing before the Planning Commission until December 2, 1998. Under Colorado law, an amendment to the zoning plan requires public hearings and action by both the Planning Commission and the Board of County Commissioners. Section 30-28-116, C.R.S. The need to supply additional information to support the rezoning request, specifically to demonstrate that the proposed tower would conform to federally adopted standards for exposure to radio frequency emissions and to demonstrate that debris from tower failure would be contained on Lake Cedar Group's property, and the need to accommodate the large volume of testimony presented delayed a final decision until August 3, 1999.

The delay by Lake Cedar Group in seeking rezoning of its agriculturally and residentially zoned property, when the requirement for digital television was established in 1996 and finalized in 1997, has precipitated the current situation. Were it not for this delay, other alternatives could have been more fully pursued, and indeed the process of judicial review could have fully run its course, well in advance of the time frame established for broadcasting digital television. The Federal Communications Commissioners should not take the unprecedented step of overruling a local land use

decision and upsetting the balance between federal and local authority simply to rectify Lake Cedar Group's delay in pursuing legal zoning processes.

C. Federal Interests Have Not Been Thwarted.

The Telecommunications Act of 1996 authorized the Federal Communications Commission to issue additional licenses for advanced television services. 47 U.S.C. §336. Pursuant to that authority, the Commission determined that rapid conversion to digital television was necessary in order to implement the service efficiently. [2] This was based on the perception that widespread and rapid implementation of digital television would be necessary to create a market for receivers and programming. See Fifth Report and Order MM Docket No. 87-268, FCC 97-116 (April 22, 1997). The Balanced Budget Act established the goal of recapturing the spectrum allocated to analog television service by December 31, 2006, but provided for and anticipated that circumstances may arise that would require an extension of that deadline. See 47 U.S.C. §309(j)(14).

The current status of Lake Cedar Group's tower proposal does not necessarily thwart these articulated federal interests. Channel 2 is not a member of Lake Cedar Group and it is pursuing placement of its digital antenna on its existing tower on Lookout Mountain. Channel 9 recently announced that it was exploring arrangements to broadcast digital television from its existing tower. In addition, it appears that Channel 7 is considering alternative arrangements that would permit it to broadcast from its existing tower on Lookout Mountain. The County Commissioners' decision only denied one approach to providing digital service to metropolitan Denver.

[2] The Telecommunications Act of 1996 does not itself establish speedy implementation and recovery of the spectrum as a goal. Section 336(c) simply creates the requirement that the original license of an existing television station be surrendered as a condition of receipt of an advanced television license.

Timely implementation of digital television in the remaining top thirty television markets largely accomplishes the Federal Communication Commission's goals of promoting digital television's competitive strength internationally and high levels of market penetration. Fifth Report and Order ¶80,81.[3] Denial of the consolidated tower proposed by Lake Cedar Group does not preclude achieving the other goal of returning the analog spectrum by December 31, 2006. Broadcasters have ample time to refine or modify the Lake Cedar Group proposal or to make alternative arrangements by that date. Paragraph (14)(B)(iii) of 47 U.S.C. §309(j) allowed broadcasters to retain their analog licenses past December 31, 2006 until more than 85% of the television households in the market receive a digital signal. Thus, even if Lake Cedar Group's rezoning application had been granted, the analog spectrum would not necessarily have been available for reuse. Therefore, federal preemption is not necessary to accomplish stated federal objectives.

If preemption were appropriate, that action must rest on legally delegated authority from a Congressional act. Lake Cedar Group has based its request for preemption a desire to have a federal agency assure that local governments act rationally. Federal agencies do not exist for that purpose.

II. FEDERAL PREEMPTION OF LOCAL LAND USE AUTHORITY IS UNWORKABLE

Lake Cedar Group requests in its petition that the Federal Communications Commission preempt the County Commissioners' rezoning decision. The petition does not propose any standard for the Federal Communications Commission to use to

[3] Concerning the objective of free, over-the-air availability of digital television, it is important to keep in mind that digital televisions currently cost several thousand dollars, thus making it beyond the reach of most households.

determine where broadcast towers may be located. Lake Cedar Group has not offered any practical alternative to allowing local governments to make land use decisions.

The petition raises a host of issues about how and when preemptive authority would be exercised and what principles of land use would function in the absence of local authority. For example, if the County Commissioners' decision were overruled, what would function in its place? The land on which the tower would be located would continue to be zoned for agricultural and residential uses; the Official Development Plan, by which all of the development restrictions and commitments are enforced, would not apply; and Jefferson County could not issue any building permits without violating its own regulations. These issues require that the land be rezoned to the proper zone district, however only the County Commissioners have the authority to do so.

The Federal Communications Commission cannot order Jefferson County to rezone land and to adopt the Official Development Plan. In the absence of that authority, a federal agency would have to take the next step of exempting all the necessary buildings and structures from building permit requirements. This action would have the unfortunate consequence of eliminating enforcement of building codes, unless the Federal Communications Commission decides that it will enforce the Uniform Building Code instead. If the Federal Communications Commission determines that the Official Development Plan should apply to the tower and surrounding property as presented by Lake Cedar Group, so that the commitments of tower consolidation are kept, it would have to be enforced in all of its detail by the federal government. These scenarios suggest that local zoning authority must continue to operate.

Petitioners have argued to the Federal Communications Commission that the site they have chosen is the most appropriate site from which to broadcast. Granting the petition would force the Federal Communications Commission to perform the delicate balancing process of weighing community interests, master land use planning, and health, safety, and welfare issues, in order to determine whether the broadcast tower should be located at the chosen site. Federal agencies are not equipped to make these decisions. The breadth of Lake Cedar Group's request begs the question of whether the Federal Communications Commission should take similar action to allow a broadcast tower in virtually any location chosen by a licensee, regardless of the surrounding land uses and community concerns, if the licensee believes that location best suits its interests. If that question is answered in the negative, then when and where should the Federal Communications Commission allow broadcast towers that do not comply with existing zoning?

The preemption regulations applicable to satellite earth station antennas in 25 C.F.R. §25.104 and amateur radio facilities do not entirely supplant local land use criteria. They allow local regulation provided they meet the stated criteria. Similarly, the preemption authorized for personal wireless service facilities in fact only prohibits certain features of land use regulations and requires evidentiary support for the land use decision. 47 U.S.C. §322. It allows the local land use process to function. Applying similar restrictions to television broadcast towers would not expedite the land use process or necessarily change the result. Yet having no adopted federal criteria is unworkable.

Petitioners have not proposed any criteria by which land use decisions should be made. They have simply requested a remedy for their situation. Federal agencies should

not engage in that sort of ad hoc action, without any adopted regulations that create criteria for action and without any proposed solutions to the myriad issues raised. Lake Cedar Group has requested federal action in a manner that creates more issues and problems than it solves. It would require a federal agency to take on land use decisions in a vacuum and with no direction. The Federal Communications Commission should not issue a notice for public comment on a petition that cannot lead to rational action.

III. FEDERAL PREEMPTION IS NOT AUTHORIZED

Consideration of issues arising under the Supremacy Clause starts with the assumption that the historic powers of the States are not to be superceded by federal action unless that is the clear and manifest purpose of Congress. New York State Conference of Blue Cross & Blue Shield Plans et al. v. Travelers Insurance Co. et al., 514 U.S. 645, 654-55 (1995); Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992). Congressional intent can be explicit if it is found within the language of the statute, or implicit in the structure and purpose of the legislation. Id. In the absence of express language of preemption, state law may be preempted if it actually conflicts with federal law or if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for States to supplement it. Id. Congress has not explicitly or implicitly authorized the Federal Communications Commission to preempt local zoning authority.

A. There is No Express Preemption Authority.

Lake Cedar Group does not argue that Congress has expressly authorized preemption of local zoning authority. Based on the holding in Cipollone, 505 U.S. at 517, the absence of express authority in the context of the Telecommunications Act of

1996 militates against implying preemptive authority as well. In Cipollone the court held that "[w]hen Congress has considered the issue of preemption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a 'reliable indicium of Congressional intent with respect to State authority' . . . 'there is no need to infer Congressional intent to preempt state laws from the substantive provisions' of the legislation . . . . Congress' enactment of a provision defining the preemptive reach of a statute implies that matters beyond that reach are not preempted." (citations omitted).

Congress considered the impact of local zoning authority on implementation of the Telecommunications Act of 1996 when it debated the language of Section 704 of the Act. (Portions of the Conference Report and Congressional Record relating to preemption attached as Appendix 3.) It is evident that Congress was aware that local zoning authority could affect the siting of telecommunications towers. Congress limited the scope of the Federal Communications Commissions' preemptive authority to narrowly defined circumstances relating to personal wireless service facilities. That language operates as a limitation on federal preemptive authority outside of those circumstances.

B. There is No Implied Preemption.

Federal preemption can be implied when the federal legislation at issue manifests Congressional intent to occupy the entire field, leaving no room for local regulation. In Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963), the court considered the nature of the subject matter to determine whether Congress had intended to occupy the field to the exclusion of state regulation. No such intent can be found in the

Telecommunications Act. The Act authorizes the Federal Communications Commission to assign frequencies and to adopt regulations governing the services that licensees may provide and technical requirements necessary to assure the quality of the signal used to provide advanced television services. 47 U.S.C. §336.

The Telecommunications Act is silent on tower siting issues. It confers broad regulatory authority over the provision of services and signal quality. The arenas committed to federal authority are not so broad and comprehensive as to imply the exclusion of any local authority. Historically, the Federal Communications Commission has recognized the authority of local governments to control the location of telecommunications uses, and those dual spheres of authority have functioned without conflict. In the absence of language altering the existing balance of authority, preemption cannot be implied from the regulatory authority encompassed with the Telecommunications Act.

C. There is No Conflict Between Federal and Local Authority.

Lake Cedar Group bases its claim of preemption on the theory of "conflict preemption." (Petition p. 23) The petition relies on the reasoning and holding in City of New York v. Federal Communications Commission, 486 U.S. 57 (1988). That decision bears no relationship to the circumstances involved in the siting of television broadcast towers.

City of New York v. FCC involved technical standards adopted by the Federal Communications Commission governing the quality of cable television signals. Those regulations prohibited local authorities from adopting more stringent standards. The Supreme Court upheld this preemption because the practice of preempting local standards

had been on-going for a ten-year period prior to certain amendments to the Cable Act, and there was no indication that Congress intended to disturb that practice. In doing so, the court noted that the Supremacy Clause encompasses federal regulations "that are properly adopted in accordance with statutory authorization." 486 U.S. at 63. A federal agency has no power to act unless Congress confers that authority, which is determined by examining the nature and scope of the authority granted. 486 U.S. at 66.

In People of the State of California v. Federal Communications Commission, 39 F.3d 919 (9th Cir. 1994), the court upheld preemption of state requirements that Regional Bell Operating Companies separate their corporate structures as a condition of providing enhanced computerized data services. This decision was based on the impossibility of complying with both state and federal regulation on structural separation. Likewise, in National Association of Regulatory Utility Commissioners v. Federal Communications Commission, 277 U.S. App. D.C. 99, 880 F.2d 422 (1989), the court upheld preemption based on the impossibility of complying with state regulation of "inside wiring" while at the same time complying with federal regulation. In both cases, the court found an actual conflict between areas of regulation that had been committed to federal jurisdiction and state regulation.

No such conflict exists in this case. There are no federal regulations that address where broadcasters must locate their facilities. Broadcasters are required to provide a certain quality of signal and to cover a certain percentage of population. Those requirements do not translate into a federal mandate to broadcast from a particular location regardless of the local land use patterns and policies. Although the Federal Aviation Administration expresses a preference for "antenna farms," they are not

mandated by federal regulation. Nor does federal jurisdiction over frequency allocation and interference support preemption. Local regulations do not require broadcasters to locate their towers in an area that will degrade their signal. Local regulations do not mandate any particular location for towers. The application of local regulations and policies has simply resulted in the denial of the particular proposal as it was presented.

Frustration of a valid federal purpose does not justify federal preemption either. Congress did not mandate speedy transition to digital television. Congress merely authorized that transition, and required the Federal Communications Commission to recover the analog spectrum for reuse. 47 U.S.C. §§309, 336. The zoning decision of the County Commissioners does not prevent local broadcasters from broadcasting a digital signal. It simply prevents them from doing it from the specific location and from the tower for which they sought zoning approval. As has been discussed above, some broadcasters are pursuing alternative locations. Similarly, the zoning decision does not prevent the Federal Communications Commission from re-auctioning the analog spectrum in the year 2007, or at such time as the broadcasters in the Denver market meet the conditions set forth in 47 U.S.C. §309. It is far too premature to determine that the zoning decision at issue will frustrate the Congressionally mandated goal of reusing the analog spectrum.

CONCLUSION

The adopted regulations of Jefferson County do not prevent Lake Cedar Group from complying with federal regulations. Jefferson County's telecommunications regulations allow major broadcast facilities provided certain conditions are met, subject to rezoning by the County Commissioners. Lake Cedar Group has not argued in its

petition that these regulations are unlawful. Lake Cedar Group's petition is founded on a disagreement over the implementation of those regulations in a particular case. Thus, it is not the regulations they seek to preempt, but a specific rezoning decision. Under the existing law, the District Court for Jefferson County is the only appropriate body to determine the validity of that decision.

Preemption of the zoning decision by the County Commissioners is not warranted by the facts in this case and is not authorized by law. Therefore, Jefferson County, Colorado requests that the Federal Communications Commission take no action on the petition of Lake Cedar Group.

Respectfully submitted,

Claire B. Levy, Esq.
Claire B. Levy, LLC
3172 Redstone Road
Boulder, Colorado 80303
Counsel for Board of County Commissioners of
Jeffeson County and Jefferson County, Colorado

December 3, 1999.

CERTIFICATE OF SERVICE

I, Claire B. Levy, hereby certify that on December 3, 1999 I mailed copies of the foregoing Initial Comments Of the County Of Jefferson In Opposition To Lake Cedar Group's Petition For Expedited Special Relief And Declaratory Ruling by first-class postage prepaid mail to the following:

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Claire Levy

CHAPTER 15

REMEDIAL WRITS AND CONTEMPT

Rule 106. Forms of Writs Abolished

(a) **Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other Remedial Writs in the District Court.** Special forms of pleadings and writs in habeas corpus, mandamus, quo warranto, certiorari, prohibition, scire facias, and proceedings for the issuance of other remedial writs, as heretofore known, are hereby abolished in the district court. Any relief provided hereunder shall not be available in the superior or county courts. In the following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:

(1) Where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of his liberty;

(2) Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained;

(3) When any person usurps, intrudes into, or unlawfully holds or exercises any office or franchise, the district attorney of the proper district may and, when directed by the governor so to do, shall bring an action against such person in the name of the people of the state, but if the district attorney declines so to do, it may be brought upon the relation and complaint of any person. The Rule heretofore existing requiring leave of court to institute such proceedings is hereby abolished. When such an action is brought against a defendant alleged to have usurped, intruded into, or who allegedly unlawfully holds or exercises any public office, civil or military, or any franchise it shall be given precedence over other civil actions except similar actions previously commenced. The judgment may determine the right of the holder of the office or franchise;

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law.

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

(II) Review pursuant to this subsection (4) shall be commenced by the filing of a complaint. An answer or other responsive pleading shall then be filed in accordance with the Colorado Rules of Civil Procedure.

(III) If the complaint is accompanied by a motion and proposed order requiring certification of a record, the court shall order the defendant body or officer to file with the clerk on a specified date, the record or such portion or transcript thereof as is identified in the order, together with a certificate of authenticity. The date for filing the record shall be after the date upon which an answer to the complaint must be filed.

(IV) Within twenty days after the date of receipt of an order requiring certification of a record, a defendant may file with the clerk a statement designating portions of the record not set forth in the order which it desires to place before the court. The cost of preparing the record shall be advanced by the plaintiff, except that the court may, on objection by the plaintiff, order a defendant to advance payment for the costs of preparing such portion of the record designated by the defendant as the court shall determine is unessential to a complete understanding of the controversy; and upon a failure to comply with such order, the portions for which the defendant has been ordered to advance payment shall be omitted from the record. Any party may move to correct the record at any time.

(V) The proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure.

(VI) Where claims other than claims under this Rule are properly joined in the action, the court shall determine the manner and timing of proceeding with respect to all claims.

APPENDIX I

(VII) A defendant required to certify a record shall give written notice to all parties simultaneously with filing of the date of filing the record with the clerk. The plaintiff shall file and serve his or her opening brief within forty days after the date on which the record was filed. If no record is requested by the plaintiff, the plaintiff shall file an opening brief within forty days after the defendant has served its answer upon the plaintiff. The defendant may file and serve an answer brief within thirty days after service of the plaintiff's brief, and the plaintiff may file and serve a reply brief to the defendant's answer brief within fifteen days after service of the answer brief.

(VIII) The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.

(IX) In the event the court determines that the governmental body, officer or judicial body has failed to make findings of fact or conclusions of law necessary for a review of its action, the court may remand for the making of such findings of fact or conclusions of law.

(5) When judgment is recovered against one or more of several persons jointly indebted upon an obligation, and it is desired to proceed against the persons not originally served with the summons who did not appear in the action, such persons may be cited to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons, and in his answer any such person may set up any defense either to the original obligation or which may have arisen subsequent to judgment, except a discharge from the original liability by the statute of limitations.

(b) Limitations as to Time. Where a statute provides for review of the acts of any governmental body or officer or judicial body by certiorari or other writ, or for a proceeding in quo warranto, relief therein provided may be had under this Rule. If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than thirty days after the final decision of the body or officer. A timely complaint may be amended at any time with leave of the court, for good cause shown, to add, dismiss or substitute parties, and such amendment shall relate back to the date of filing of the original complaint.

Cross references: For original jurisdiction of the supreme court, see C.A.R. 21; for petition for writ of habeas corpus in criminal cases, see § 13-45-101; for writ of habeas corpus in civil cases, see § 13-[illegible]; for original jurisdiction of supreme court on certiorari, see C.A.R. 49 and 50; for effect of judgment against a partnership, see C.R.C.P. 54(e).

I. General Consideration.
II. Habeas Corpus.
III. Mandamus.
  A. In General.
  B. Illustrative Cases.
IV. Quo Warranto.
  A. In General.
  B. Franchises and Offices.
  C. Who May Bring Action.
V. Certiorari or Prohibition.
  A. In General.
  B. Extent of Review.
  C. Illustrative Cases.
VI. Other Writs.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § § 147, 148.

Law reviews. For article, "Mandamus and Other Writs", see 18 Dicta 338 (1941). For article, "One Year Review of Civil Procedure", see 34 Dicta 69 (1957). For article, "One Year Review of Civil Procedure", see 35 Dicta 3 (1958). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 23 (1960). For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 135 (1961). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962). For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For note on current developments, "Civil Procedure: Application of 'Indispensable Party' Provision of Colo. R. Civ. P. 19—the 'Procedural Phantom' Still Stalks in Colorado", see 46 U. Colo. L. Rev. 609 (1974-75). For note, "Referendum on Rezoning: Margolis v. District Court", see 51 Colo. L. Rev. 745 (1982). For article, "Original Proceedings in the Colorado Supreme Court", see 12 Colo. Law. 413 (1983). For article, "Asserting Vested Rights in Colorado", see 12 Colo. Law. 1199 (1983). For article, "Judicial Review, Referral and Initiation of Zoning Decisions", see 13 Colo. Law. 387 (1984). For article, "C.R.C.P. Rule 106: Amendments Governing Appeals from Local Governmental Decisions", see 15 Colo. Law. 1643 (1986). For article, "Land Government Exactions from Developers: The Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987).

Purpose of rule. Under the former Colorado Civil Procedure complaints apparently [illegible]

DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Case No. 99CV2007 Div. 2

COMPLAINT

LAKE CEDAR GROUP LLC, a Delaware limited liability company,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, STATE OF COLORADO,

Defendant.

Plaintiff, Lake Cedar Group LLC, a Delaware limited liability company ("Plaintiff"), by and through its undersigned counsel, states the following as its Complaint against the Board of County Commissioners of Jefferson County, Colorado (the "Board"):

GENERAL ALLEGATIONS

1. This action involves the challenge by Plaintiff of an action taken by the Board denying the rezoning application, Case No. 98015154RZPI, filed by Plaintiff on or about July 1, 1998 (the "Application").

2. Venue in this Court is proper pursuant to C.R.C.P. 98(a) and 98(b) because the Property is located in, and the Board's action was taken in, Jefferson County, Colorado (the "County").

3. The purpose of the Application was to rezone certain property located on Lookout Mountain (the "Property") in unincorporated Jefferson County to permit the construction of a new consolidated telecommunications tower (and a related transmitter building) and to provide for the removal of four telecommunications towers currently located on Lookout Mountain. The Property comprises approximately 80 acres.

4. The Property is owned by members of Plaintiff. Plaintiff processed the Application based on powers of attorney from its members supplied by Plaintiff to the County.

In addition, Plaintiff has an agreement with its members to purchase the Property subject to certain contingencies.

5. Pursuant to C.R.S. § 30-28-113, the Board is authorized to regulate the construction and use of buildings and structures in the unincorporated areas of Jefferson County (the "County") and may, pursuant to such authority, divide the unincorporated territory of the County into districts or zones.

6. Pursuant to the Jefferson County Zoning Resolution (the "Zoning Resolution"), the unincorporated territory of the County is divided into a number of zone districts.

7. A portion of the Property is located in the Agricultural-Two (A-2) Zone District pursuant to the Zoning Resolution. The remaining portion of the Property is located in the Mountain Residential-One (MR-1) Zone District pursuant to the Zoning Resolution.

8. The Property is located in an area on Lookout Mountain that has been utilized as the site for many broadcasting towers since the mid-1950s. The construction of most of the large towers on Lookout Mountain predated zoning in the area. The large majority of the residences in the area were built after the area started being used for broadcasting towers.

9. The Federal Communications Commission (the "FCC") has required that television broadcasters implement a new digital television ("DTV") broadcasting system in the United States. Pursuant to this FCC requirement, the Denver metropolitan area affiliates of the top four commercial networks are supposed to begin broadcasting DTV signals by November 1, 1999. Other commercial stations and non-commercial stations have deadlines of May 1, 2002, and May 1, 2003, respectively. During a transition period mandated by the FCC, all broadcasters will be required to continue simultaneously broadcasting their traditional television signals. This requirement means television broadcasters will be required to operate two separate television broadcasting systems (including separate transmitters and antennas) until the transition to DTV is complete.

10. The members of Plaintiff are television broadcasters currently operating in the Denver market. Pursuant to the FCC's requirements for DTV, each member of Plaintiff will be required to construct and operate a DTV broadcasting system in addition to its existing regular broadcasting system.

11. Plaintiff sought approval of the Application for the purpose of constructing a consolidated telecommunications facility that would accommodate the DTV broadcasting systems of Plaintiff's members, along with additional broadcasting systems.

12. Because of the additional room for antennas on Plaintiff's proposed consolidated tower, Plaintiff committed to remove four of the existing large towers on Lookout Mountain if the Application were approved.

13. The County's Telecommunications Land Use Plan—which is a component of the County's Comprehensive Plan—encourages the consolidation of telecommunications facilities and recognizes Lookout Mountain as an existing tower farm on which new towers may be constructed.

14. Pursuant to the Application, Plaintiff sought to rezone the Property to include it within a Planned Development (PD) Zone District (the "PD District"). According to the Zoning Resolution, a PD District is a versatile zoning mechanism allowing for land development of any nature.

15. Pursuant to Section 15 of the Zoning Resolution--which contains the regulations in the Zoning Resolution governing PD Districts (the "PD Regulations")--the permitted uses and standards of development for a particular PD District are those approved by the Board in the rezoning case and included in the "Official Development Plan" for the particular PD District. An Official Development Plan prescribes in textual and graphic form the manner in which the property within a particular PD District may be used and developed.

16. Section 15(F) of the PD Regulations is a special section that addresses planned developments for telecommunications towers (the "Tower PD Regulations").

17. The Tower PD Regulations prescribe application requirements and criteria for approval of proposed PD Districts for telecommunications towers.

18. Section 15(F)(2)(a)(1) of the Tower PD Regulations directs the Board to consider an application's compatibility with the "land uses in the surrounding area; the County's Comprehensive Plan ... ; the Local Government Land Use Enabling Act; the provisions of § 30-28-115, C.R.S., and any other applicable law, adopted public policies or plans, or studies presented as part of the zoning case." The Tower PD Regulations vest the Board with "the sole discretion to determine what weight, if any, to give each of these factors."

19. Pursuant to the requirements of the Zoning Resolution, the Jefferson County Planning Commission (the "Planning Commission") considered the Application at a public hearing that began on December 2, 1998, and was continued to January 6, 1999, and January 13, 1999. At this public hearing, the Planning Commission took evidence and heard testimony from Plaintiff and other witnesses demonstrating the Application satisfied the requirements of the Zoning Resolution, including the Tower PD Regulations.

20. A group named Canyon Area Residents for the Environment ("CARE") appeared at the public hearing held by the Planning Commission to oppose the Application. The Planning Commission treated CARE just as any other public opposition group. The Planning Commission did not afford CARE any special status in the Planning Commission's proceeding.

21. At the conclusion of its public hearing on January 13, 1999, the Planning Commission voted 6-to-1 to recommend that the Board approve the Application.

22. The Board's public hearing on the Application (the "Public Hearing") began on February 2, 1999, but was continued until March 10, 1999, and again until April 27, 1999, before the Board began taking testimony and evidence concerning the Application. Once the Board began taking testimony on April 27, the Public Hearing lasted for three additional meetings convened by the Board on May 27, June 29 and July 13.

23. At the Public Hearing on April 27, 1999, Plaintiff presented testimonial and documentary evidence in support of the Application.

24. Following Plaintiff's presentation on April 27, 1999, the Board turned the floor over to CARE. The Board gave CARE special status as a participant in the Public Hearing by scheduling CARE for five and a half hours of opposition testimony before the general public would be permitted to testify.

25. CARE's presentation actually lasted over 7 hours, continuing through the remainder of the April 27 meeting, the entire 5-hour meeting held on May 27 and the first hour of the meeting held on June 29. The Board permitted CARE to present much prejudicial and irrelevant testimony on the adequacy of the County's regulations governing radio-frequency radiation. The adequacy of the County's regulations was not an issue properly before the Board in its consideration of the Application.

26. At the conclusion of CARE's presentation on June 29, the Board opened the floor of the Public Hearing to the general public. At the conclusion of public testimony, the Board continued the Public Hearing until July 13, 1999.

27. At the continuation of the Public Hearing on July 13, 1999, the Board took rebuttal testimonial and documentary evidence from Plaintiff in support of the Application and then heard concluding remarks from CARE and Plaintiff. The Board then closed the Public Hearing and entered an executive session to consult with its legal counsel.

28. After returning from executive session at the continuation of the Public Hearing on July 13, 1999, the Board, by unanimous voice vote, passed a motion denying the Application and directing the County Attorney to prepare a resolution articulating reasons for the denial (the "Voice Vote"). The Board made no findings in support of the Voice Vote denying the Application.

29. On August 3, 1999, the Board, by a 2-0 vote, adopted written Resolution No. CC99-427 (the "Resolution") denying the Application.

30. The Resolution articulated several finding in support of the Board's denial of the Application, including:

(a) That the Application did not substantially conform with the County's Central Mountains Community Plan, which is a component of the County's Comprehensive Plan;

(b) That the Application did not substantially conform with the County's Telecommunications Land Use Plan, which is also a component of the County's Comprehensive Plan;

(c) That the Application did not meet the minimum standards for telecommunications facilities contained in the Zoning resolution because: (i) Plaintiff did "not demonstrate that no alternative existing site is available to accommodate the equipment at a reasonable cost or other business terms"; (ii) the Application did not "contain sufficient setbacks"; and (iii) Plaintiff did not demonstrate the Application met the standards for emission of non-ionizing electromagnetic radiation set forth in the Zoning Resolution; and

(d) That the Application was incompatible with residential uses in the surrounding area.

31. In considering and denying the Application, the Board was exercising a quasi-judicial function.

32. There is no plain, speedy and adequate remedy provided by law by which Plaintiff may challenge and seek invalidation of the Board's denial of the Application.

FIRST CLAIM FOR RELIEF

(C.R.C.P. 106(a)(4) – Abuse of Discretion/Exceeding Jurisdiction)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. The Application satisfied all of the standards and criteria for approval prescribed in the Tower PD Regulations and the other applicable sections of the Zoning Resolution.

35. The Board violated Plaintiff's due process rights by permitting CARE to present prejudicial and irrelevant testimony concerning the adequacy of the County's regulations governing radio-frequency radiation.

36. In denying the Application, the Board abused its discretion and/or exceeded its jurisdiction.

37. In addition, the Board abused its discretion and/or exceeded its jurisdiction by making no findings in connection with its initial decision by the Voice Vote to deny the Application.

38. In addition, after the Board had made the Voice Vote denying the Application, it had no further jurisdiction to take any action with respect to the Application, including the adoption of the Resolution.

39. Pursuant to C.R.C.P. 106(a)(4), Plaintiff is entitled to certiorari review of the Board's actions and an order invalidating the Board's denial of the Application and either directing the Board to approve the Application or remanding the matter to the Board for further consideration.

SECOND CLAIM FOR RELIEF

(C.R.C.P. 57 – Due Process/Facial Invalidity of Regulations)

40. Paragraphs 1 through 39 above are incorporated herein by reference.

41. Section 15(F)(2)(a)(1) of the Tower PD Regulations is invalid and void on its face because it: (a) deprives applicants of the right to sufficiently specific standards that ensure decisions are made in a rational and consistent manner and are susceptible to meaningful judicial review; (b) fails to provide applicants with notice of the approval standards to which they will be held; and (c) constitutes an overly broad and vague delegation of authority to the Board in its quasi-judicial capacity.

42. Section 15(F)(2)(a)(1) of the Tower PD Regulations is invalid and void on its face as a violation of Plaintiff's due process rights under the Colorado Constitution and the United States Constitution.

43. Pursuant to C.R.C.P. 57, Plaintiff is entitled to a declaratory judgment that Section 15(F)(2)(a)(1) of the Tower PD Regulations is void and a correlative order pursuant to C.R.C.P. 106(a)(4) that the Board abused its discretion and/or exceeded its jurisdiction in relying on invalid regulations in denying the Application.

WHEREFORE, Plaintiff prays that this Court:

44. Enter an order finding that the Board abused its discretion by denying the Application;

45. Enter an order finding that the Board exceeded its jurisdiction by denying the Application;

46. Enter an order finding Section 15(F)(2)(a)(1) of the Tower PD Regulations is invalid and void on its face; and

47. Grant Plaintiff such other relief as the Court deems just and proper.

Dated this 12th day of August, 1999.

OTTEN, JOHNSON, ROBINSON,
NEFF & RAGONETTI, P.C.

By: _____

Thomas J. Ragonetti, #08441
J. Thomas Macdonald, #11394
J. Bart Johnson, #26116
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ATTORNEYS FOR PLAINTIFF

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CO

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DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Case No. 99CV2087, Div. ___

FILED
COURT
JEFFERSON COUNTY, CO

MOTION FOR CERTIFICATION OF THE RECORD PURSUANT TO RULE 106(a)(4)(III), C.R.C.P.

LAKE CEDAR GROUP LLC, a Delaware limited liability company,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, STATE OF COLORADO,

Defendant.

Plaintiff, Lake Cedar Group LLC, a Delaware limited liability company ("Plaintiff"), by and through its undersigned counsel, respectfully submits this Motion for Certification of the Record Pursuant to Rule 106(a)(4)(III), C.R.C.P., and in support thereof states as follows:

1. Plaintiff's Complaint in this action, filed on the same day as this Motion, challenges an action taken by the Board of County Commissioners of Jefferson County (the "Board") by which the Board denied Plaintiff's rezoning application in Case No. 98015154RZP1 (the "Application").

2. In its First Claim for Relief, Plaintiff seeks review of the Board's decision to deny the Application pursuant to Rule 106(a)(4), C.R.C.P., to determine whether the Board exceeded its jurisdiction or abused its discretion. Pursuant to Rule 106(a)(4), C.R.C.P., a plaintiff may move for an order requiring certification of the record at the time a complaint is filed.

3. Plaintiff respectfully moves this Court for an order to the Board requiring certification of the record in this matter, including, without limitation, the following:

(a) All files and materials maintained by the Jefferson County Planning Department, the Jefferson County Planning Commission, the Board, and any of their respective staff concerning the Application, including, without limitation, all written correspondence, referral responses, recommendations, resolutions, drafts, studies, reports, evidence, exhibits, memoranda, notes, studies, maps and diagrams;

(b) Tapes and minutes of all hearings held by the Jefferson County Planning Commission concerning the Application;

(c) Tapes, minutes and transcripts of all hearings held by the Board concerning the Application; and

(d) The official Jefferson County Zoning Resolution, Telecommunications Land Use Plan and Central Mountains Community Plan as they existed as of the Board's action on the Application.

Respectfully submitted this 12th day of August, 1999.

OTTEN, JOHNSON, ROBINSON,
NEFF & RAGONETTI, P.C.

By: _____

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Telephone: (303) 825-8400

Attorneys for Plaintiff

attachment rate prescribed by the Commission pursuant to the fully allocated cost formula.

Finally, the new provision requires that whenever the owner of a conduit or right-of-way intends to modify or to alter such conduit or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such conduit or right-of-way accessible.

Conference agreement

The conference agreement adopts the Senate provision with modifications. The conference agreement section 224 of the Communications Act by adding new subsection (e)(1) to allow parties to negotiate the rates, terms, and conditions for attaching to poles, ducts, conduits, and rights-of-way owned or controlled by utilities. New subsection 224(e)(2) establishes a new rate formula charged to telecommunications carriers for the non-useable space of each pole. Such rate shall be based upon the number of attaching entities. The conferees also agree to three additional provisions from the House amendment. First, subsection (g) requires utilities that engage in the provision of telecommunications services or cable services to impute to its costs of providing such service an equal amount to the pole attachment rate for which such company would be liable under section 224. Second, new subsection 224(h) requires utilities to provide written notification to attaching entities of any plans to modify or alter its poles, ducts, conduit, or rights-of-way. New subsection 224(h) also requires any attaching entity that takes advantage of such opportunity to modify its own attachments shall bear a proportionate share of the costs of such alterations. Third, new subsection 224(i) prevents a utility from imposing the cost of rearrangements to other attaching entities if done solely for the benefit of the utility.

section 704--facilities siting; radio frequency emission standards

Senate bill

No provision.

House amendment

Section 108 of the House amendment required the Commission to issue regulations within 180 days of enactment for siting of CMS. A negotiated rulemaking committee comprised of State and local governments, public safety agencies and the affected industries were to have attempted to develop a uniform policy to propose to the Commiscion for the siting of wireless tower sites.

The House amendment also required the Commission to complete its pending Radio Frequency (RF) emission exposure standards within 180 days of enactment. The siting of facilities could not be denied on the basis of RF emission levels for facilities that were in compliance with the Commission standard.

The House amendment also required that to the greatest extent possible the Federal government make available to use of Federal property, rights-of-way, easements and any other physical instruments in the siting of wireless telecommunications facilities.

Conference agreement

The conference agreement creates a new section 704 which prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth in the conference agreement.

The conference agreement also provides a mechanism for judicial relief from zoning decisions that fail to comply with the provisions of this section. It is the intent of the conferees that other than under section 332(c)(7)(B)(iv) of the Communications Act of 1934 as amended by this Act and section 704 of the Telecommunications Act of 1996 the courts shall have exclusive jurisdiction over all other disputes arising under this section. Any pending Commission rulemaking concerning the preemption of local zoning authority over the placement, construction or modification of CMS facilities should be terminated.

When utilizing the term ``functionally equivalent services'' the conferees are referring only to personal wireless services as defined in this section that directly compete against one another. The intent of the conferees is to ensure that a State or local government does not in making a decision regarding the placement, construction and modification of facilities of personal wireless services described in this section unreasonably favor one competitor over another. The conferees also intend that the phrase ``unreasonably discriminate among providers of functionally equivalent services'' will provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services. For example, the conferees do not intend that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's 50-foot tower in a residential district.

Actions taken by State or local governments shall not prohibit or have the effect of prohibiting the placement, construction or modification of personal wireless services. It is the intent of this section that bans or policies that have the effect of banning personal wireless services or facilities not be allowed and that decisions be made on a case-by-case basis.

Under subsection (c)(7)(B)(ii), decisions are to be rendered in a reasonable period of time, taking into account the nature and scope of each request. If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances. It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision.

The phrase ``substantial evidence contained in a written record'' is the traditional standard used for judicial review of agency actions.

The conferees intend section 332(c)(7)(B)(iv) to prevent a State or local government or its instrumentalities from basing the regulation of the placement, construction or modification of CMS facilities directly or indirectly on the environmental effects of radio frequency emissions if those facilities comply with the Commission's regulations adopted pursuant to section 704(b) concerning such emissions.

The limitations on the role and powers of the Commission under this subparagraph relate to local land use regulations and are not intended to limit or affect the Commission's general authority over radio telecommunications, including the authority to regulate the construction, modification and operation of radio facilities.

The conferees intend that the court to which a party appeals a decision under section 332(c)(7)(B)(v) may be the Federal district court in which the facilities are located or a State court of competent jurisdiction, at the option of the party making the appeal, and that the courts act

(2)

expeditiously in deciding such cases. The term ''final action'' of that new subparagraph means final administrative action at the State or local government level so that a party can commence action under the subparagraph rather than waiting for the exhaustion of any independent State court remedy otherwise required.

With respect to the availability of Federal property for the use of wireless telecommunications infrastructure sites under section 704(c), the conferees generally adopt the House provisions, but substitute the President or his designee for the Commission.

It should be noted that the provisions relating to telecommunications facilities are not limited to commercial mobile radio licensees, but also will include other Commission licensed wireless common carriers such as point to point microwave in the extremely high frequency portion of the electromagnetic spectrum which rely on line of sight for transmitting communication services.

[[Page H1135]]

Section 705--Mobile service direct access to long distance carriers

Senate bill

Subsection (b) of section 221 of the Senate bill, as passed, states that notwithstanding the MFJ or any other consent decree, no CMS provider will be required by court order or otherwise to provide long distance equal access. The Commission may only order equal access if a CMS provider is subject to the interconnection obligations of section 251 and if the Commission finds that such a requirement is in the public interest. CMS providers shall ensure that its subscribers can obtain unblocked access to the interexchange carrier of their choice through the use of interexchange carrier identification codes, except that the unblocking requirement shall not apply to mobile satellite services unless the Commission finds it is in the public interest.

House amendment

Under section 109 of the House amendment, the Commission shall require providers of two-way switched voice CMS to allow their subscribers to access the telephone toll services provider of their choice through the use of carrier identification codes. The Commission rules will supersede the equal access, balloting and prescription requirements imposed by the MFJ and the AT&T-McCaw consent decree. The Commission may exempt carriers or classes of carriers from the requirements of this section if it is consistent with the public interest, convenience, and necessity, and the provision of mobile services by satellite is specifically exempt from this section.

Conference agreement

The conference agreement adopts the House provision with modifications as a new paragraph (8) of section 332 of the Communications Act. Specifically, no CMS provider is required to provide equal access to common carriers providing telephone toll services. However, the Commission may impose rules to require unblocked access through the use of mechanisms such as carrier identification codes or toll-free numbers, if it determines that customers are being denied access to the telephone toll service provider of their choice, and such denial is contrary to the public interest, convenience, and necessity. The requirements for unblocked access to providers of telephone toll service shall not apply to mobile satellite services unless the Commission finds it to be in the public interest.

over-the-air broadcasting, they have the [illegible] pay for it like everybody else. That is what the bill currently says.

One final point: The issue of a broadcast spectrum is tied up with something called the public interest standard. It has to do with the trade we made a long time ago to licensed broadcasters who operate under a public interest standard, a relicensing by the FCC, and a review of that licensing over time.

If my colleagues want to change that policy, and some do, they ought not make it in a budget meeting; they ought to make it in the committee of jurisdiction where we examine what happens on television and what broadcasters do with the license they get to operate in the public interest standard. I urge my colleagues to pass this bill and let us debate that issue in the committee of jurisdiction where it belongs.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Speaker, I would like to thank the gentleman from Virginia [Mr. BLILEY], chairman, and the gentleman from Michigan [Mr. DINGELL], ranking member, and of course the gentleman from Texas [Mr. FIELDS], the chairman of the subcommittee, and the gentleman from Massachusetts [Mr. MARKEY], the ranking member of the subcommittee.

I am pleased that this conference report contains a new initiative to assist in the development of capital funds for small businesses. This telecommunications development fund will provide low-interest loans to small businesses with $50 million or less through upfront spectrum auction payments. I would like to thank the leadership of the committee for bringing this momentous legislation forward and for supporting my efforts to assist small businesses.

Mr. CONYERS. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, the argument we hear against auctioning off the spectrum to the broadcasters, as we have just heard from my friend from Louisiana, after all, they operate with public interest obligations. I have been here with him 15 years, and that is the nicest I have ever heard him talk about public interest obligations.

The broadcasters successfully work to reduce those public interest obligations to mean virtually nothing. The only time they raise them is when they can use them as an excuse to get the superhighway, as the gentleman from North Carolina said, for free. I do not think that my friend from Louisiana believes that that public interest standard will ever be amounting to much. It is simply a flag they wave so they can get this for free.

Mr. BLILEY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. HAYWORTH). The gentleman from Virginia [Mr. BLILEY] has [illegible] minutes remaining, and the gentleman from Massachusetts [Mr. MARKEY] has 6 minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. GOODLATTE].

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Mr. Speaker, I rise in strong support of this very, very important bill that is going to provide deregulation in an industry that is badly needed. We are going to finally bring the telecommunication policy of this country into the last half of the 20th century before we enter the 21st century.

Mr. Speaker, this bill is going to create millions of jobs, estimated over 3 million jobs due to the new competition and the new technologies that are [illegible].

I would also like to thank the gentleman from Illinois [Mr. HYDE], the chairman, and the gentleman from Virginia [Mr. BLILEY], the chairman of the conference, for making it possible for me to play a key role in working out an agreement that protects the rights of local governments to see that their [illegible] are carried forward [illegible] they have the ability [illegible] in each locality where they are placed while fairly making sure that those locations do not interfere with interstate commerce and with the opportunity to advance this new technology.

I strongly support this legislation and urge my colleagues to vote for the conference report.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. WHITE], a member of the committee.

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Speaker, I thank the gentleman from Virginia [Mr. BLILEY] and the gentleman from Texas [Mr. FIELDS] for giving me the opportunity to be part of this bill.

This is a good bill. It is an important bill. I would like to point out what sometimes gets lost when we talk about all the details. The main accomplishment of this bill is that it takes us from our current situation of regulated monopolies in many, many industries and takes us to an era of competition. That is the huge accomplishment of this bill. It is a very important accomplishment, and I think it is something we can all be proud of.

There are several other issues this bill deals with. Like many good bills, this is not a perfect bill. I think we have a ways to go making sure that the Internet is protected under this bill. I think we ended up with the wrong standard for indecency. I think we have to make sure that the FCC does not have a role in regulating the Internet. I think that the gentleman from Texas [illegible] the gentleman will yield, [illegible] viewed that. He is accurate and supportive.

Mr. WHITE. Mr. Speaker, reclai[ming] my time, I appreciate that. I than[k the] gentleman from Virginia [Mr. BL[ILEY]] and the gentleman from Texas [Mr. FIELDS] for letting me be part o[f this] bill. It is a great bill, and I ho[pe we] adopt it.

Mr. BLILEY. Mr. Speaker, I [yield] myself 1 minute.

Mr. Speaker, in reviewing sectio[n] [illegible] of the bill as modified by the [con]ference agreement, which deals [with] the preemption of local taxation [of di]rect-to-home services, I wonder w[hether] or this provision should also in[clude] any present or future wireless se[rvice] providers who transmit video prog[ramming] to subscribers without using t[radi]tional, wire-based distribution e[quip]ment as the new local multipoint [dis]tribution services, or LMDS.

I yield to the gentleman from Ill[inois] [illegible] the chairman of the Con[illegible] [illegible] the Judiciar[y] [illegible] this Congress.

Mr. [illegible]. Mr. Speaker, I y[ield] the balance of my time.

Mr. MARKEY. Mr. Speaker, I [yield] myself such time as I may consum[e].

Mr. Speaker, this is a historic [day]. The legislation which we are cons[ider]ing has been constructed over a 4-[year] period. Much deliberation has [been] given to this legislation. Many is[sues] so complex that they could not b[e] solved in brief periods of time had [to be] deliberated after much expert opi[nion] over month-long periods.

The product that we have out her[e on] the floor is not perfect, but it is [a] blueprint for the information su[per]highway of the 21st century. Its [most] important component is that it [has] competition as its core, as its soul.

Everything in this bill is not per[fect]. The bill, in fact, guarantees tha[t no] company in any industry will [any] longer be able to rest comfort[ably] knowing that they have a mono[poly] and that telecommunications or c[om]puter or long distance or softwar[e or] whatever high technology indu[stry] that they seek to make their fort[une] in.

In addition, we ensure [illegible] ensure that consumers are goin[g to] have choices. There will be two w[ires] at a minimum to almost every sin[gle] home in the country, each wire abl[e to] perform every single one of [these] [illegible]. If you throw in the [illegible] panies, which also have the [illegible] do so, we are going to have a [illegible]tion which the smallest companies [illegible]

Delaware, for example, the local phone company will be able to offer consumers long distance services and other telecommunications products. The local phone company, however, will no longer operate as a monopoly, and will face competition from other companies. For the first time Delawareans will have a choice of telecommunications providers, and as companies compete for their business, they will reap significant benefits.

I also support provisions that would ensure our Nation's schools and libraries have affordable access to educational telecommunications services. Schools can use telecommunications to ensure that all students, regardless of economic status, have access to the same rich learning resources. Libraries [illegible] publicly accessible means of electronic access to support classroom instruction, to communicate with the world-wide library community, to facilitate small business development, to access employment listings and Government databases, among other uses. It is in the Nation's best interest to ensure that all schools and libraries, even those in rural areas, are active participants in the information age.

The impact of this legislation, of course, extends far beyond the borders of Delaware. Everyone, from an elementary school child exploring the world beyond his or her local community, to an elderly person benefiting from the expert advice of a physician 1000 miles away via Telemedicine, to a business seeking to become more efficient, to a parent wishing to telecommute to work, to a couch potato channel surfing through 500 channels, to an innovative entrepreneur seeking to provide new telecommunications services—everyone stands to benefit enormously from this legislation. Consequently, I give it my strong support and urge my colleagues to do the same.

Mr. BILIRAKIS. Mr. Speaker, I rise in strong support of the landmark legislation which we are considering today, S. 652 is the culmination of years of work to overhaul Federal telecommunications policy and position America as a world leader in the dawning information age.

While this bill contains many important provisions, I want to address one area in particular—the issue of "Telemedicine." As chairman of the Commerce Health Subcommittee, I have a special interest in this subject.

Although it is subject to different interpretations, the term "Telemedicine" generally refers to live, interactive audiovisual communication between physician and patient or between two physicians. Telemedicine can facilitate consultation between physicians and serve as a method of health care delivery in which physicians examine patients through the use of advanced telecommunications technology.

One of the most important uses of Telemedicine is to allow rural communities and other medically underserved areas to obtain access to highly-trained medical specialists. It also provides access to medical care in circumstances when possibilities for travel are limited or unavailable.

Despite widespread support for Telemedicine in concept, many critical policy questions remain unresolved. At the same time, the Federal Government is currently spending millions of dollars on Telemedicine demonstration projects with little or no congressional oversight. In particular, the Departments of Commerce and Health and Human Service have provided sizable grants for projects in a number of States.

Therefore, I drafted a provision which is included in the conference report to require the Department of Commerce, in consultation with other appropriate agencies, to report annually to Congress on the findings of any studies and demonstrations on Telemedicine which are funded by the Federal Government.

My provision is designed to provide greater information for Federal policymakers in the areas of patient safety, quality of services, and other legal, medical and economic issues related to Telemedicine. With the enactment of this provision, I am hopeful that we can shed light on the potential benefits of Telemedicine, as well as existing roadblocks to its use.

I urge my colleagues to support the conference report to S. 652, this legislation will prove critical in defining our Nation's leadership role and economic viability in the 21st century.

Mr. TAUZIN. Mr. Speaker, as the principal author of section 365 of the conference report, I rise to amplify the limited description of this provision in the statement of managers. In essence, this provision will permit a large ocean-going American-flag vessel operating in accordance with the Global Maritime Distress and Safety System [GMDSS] of the SOLAS Convention to sail without a radio telegraphy station operated by a radio officer or operator.

In implementing this section, the Coast Guard can rely on the Federal Communications Commission to determine that a large ocean going vessel has GMDSS equipment installed and operating in good working condition. We do not contemplate the Coast Guard conducting a rulemaking, public hearings, or other lengthy regulatory process. Rather, we contemplate a simple adaptation of current, well-established Commission certification procedures.

Under section 359 of current law, the Federal Communications Commission is authorized to issue a certificate of compliance to the operator of a vessel demonstrating that the vessel is in full compliance with the radio provisions of the SOLAS Convention. By law, this certificate must be carried on board the vessel at all times the ship is in use. Thus, once a vessel operator has installed the necessary GMDSS equipment and demonstrated to the satisfaction of the Commission that the equipment is operating in good working condition, the operator will obtain a new or modified certificate of compliance from the Commission. By confirming that a vessel has on board such a valid certificate, the Coast Guard would fulfill its responsibilities under section 365.

Let me emphasize, as well, that this provision does not alter the Commission's manning or maintenance requirements in any respect. Vessel operators, for example, will continue to be able to adopt two of the three permitted maintenance options: on-shore maintenance and equipment duplication.

For too long, American-flag vessels have been saddled with the antiquated telegraphy station requirements of the 1934 act. Through our action today, we hope to help American-flag operators become more internationally competitive and to speed the introduction of the satellite-based GMDSS technology.

Mr. SENSENBRENNER. Mr. Speaker, I support the conference report before the House today. I am hopeful this legislation will ensure that our telecommunications markets remain the most competitive in the world. The Justice Department's role in the success of the legislation before us is critical. For over a decade, the Justice Department has fostered competition in these markets and the bill requires that the Federal Communications Commission, as part of its interest review, will give "substantial weight" to the Justice Department's evaluation of a Bell Operating Company's application for entry into long distance.

The role included in this bill for the Department of Justice is truly essential to the ultimate success of this bill. In particular, the bill requires the FCC to rely on the Department's expertise to assess the overall competitive impact of the RBOCs entry into long distance. Clearly, there are other public interest factors which are entitled to their proper weight and the FCC's reliance on the Justice Department is limited to antitrust-related matters. In those instances when the cumulative effect of all other factors clearly and significantly outweighs the Justice Department's competitiveness concerns, the FCC should not be precluded from acting accordingly. However, I expect the FCC will not take actions that, in the Justice Department's view, would be harmful to competition.

Second, I strongly opposed a provision included in the House passed bill that would have allowed the Federal Communications Commission [FCC] to issue rules that would preempt local zoning on where to site cellular communications towers. Cellular communications companies would have been allowed to place towers in any location, regardless of local concerns and the actions of local city councils and planning commissions, provided that they had obtained approval from an FCC bureaucrat in Washington. It is estimated 100,000 towers will be sited across the country by the year 2000. I have consistently supported the rights of local governments to decide zoning questions and I opposed this bill because it dramatically infringed on the rights of local government with respect to zoning. I am pleased a compromise has been reached on this issue and the FCC will be prevented from infringing on the rights of local and State land use decisions. The authority of State and local governments over zoning and land use matters is absolutely essential and must be preserved.

I congratulate Chairman Hyde, Bliley, and Fields for their tireless work on this historic legislation.

Mr. HOLDEN. Mr. Speaker, the Telecommunications Act of 1996 furthers the vital local telecommunications competition goal by prohibiting States and local governments from erecting barriers to new entrants providing service. This is an excellent provision, but, because it is a general mandate, there may be creative attempts to get around it. At the very least, such attempts to skirt the law would result in lengthy litigation, which would slow investment and competition. It is for that reason that I would like to spell out in more detail the types of requirements that State and local governments should not be able to impose: A State or local government should not be able to require that any provider:

Demonstrate that its provision of service would not harm the competitive position of any current or future providers of service, would be beneficial to consumers, or would not affect universal service;

Show that its provision of service would not harm the network of any provider, other than

there was a great concern among some of our local governments about some issues here, particularly two, as I have said. I want to address the issue of zoning.

Mr. Speaker, as to the cellular industry expanding into the next century, there will be a need for an estimated 100,000 new transmission poles to be constructed throughout the country. I am told. I want to make sure that nothing in H.R. 1555 preempts the ability of local authorities to determine the placement and construction of these new towers. Land use has always been, and I believe should continue to be, in the domain of the authorities in the areas directly affected.

I must say I appreciate that communities cannot prohibit access to the new facilities, and I agree they should not be allowed to, but it is important that cities and counties be able to enforce their zoning and building codes. That is the first point.

Similarly, Mr. Speaker, I want to clarify that the bill does not restrict the ability of local governments to derive revenues for the use of public rights-of-way so long as the fees are not in a nondiscriminatory way.

Mr. BLILEY. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentleman from Virginia, the distinguished chairman of the Committee on Commerce.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding. I want to commend the gentleman and his colleagues and the chairman of the Committee on Rules for this rule. I wholeheartedly support it.

Let me say this, I was President of the Virginia Municipal League as well as being Mayor of Richmond, and I was on the board of directors of the National League of Cities. When legislation came to this body in a previous Congress for a taking of Manassas Battlefield, I voted against it because the supervisors of Prince William County had made that decision. I have resisted attempts by people to get me involved in the Civil War preservation of Brandywine Station in Culpeper County for the same reasons.

Nothing is in this bill that prevents a locality, and I will do everything in conference to make sure this is absolutely clear, prevents a local subdivision from determining where a cellular pole should be located, but we do want to make sure that this technology is available across the country, that we do not allow a community to say we are not going to have any cellular pole in our locality. That is wrong. Nor are we going to say they can delay these people forever. But the location will be determined by the local governing body.

The second point you raise, about the charges for right-of-way, the councils, the supervisors and the mayor can make any charge they want provided they do not charge the cable company one fee and they charge a telephone company a lower fee for the same right-of-way. They should not discriminate, and that is all we say. Charge what you will, but make it equitable between the parties. Do not discriminate in favor of one or the other.

Mr. GOSS. Mr. Speaker, reclaiming my time, I thank the gentleman for that very clear explanation.

Mr. BLILEY. If the gentleman would continue to yield, the gentlewoman from Maryland has raised a point with [illegible] technology. Let me assure the gentlewoman that I know there is a provision on this in the Senate bill, and I will work with her and work with the other body to see that it is preserved and the intent of what she would have offered had she been able to is carried out in the final legislation.

Mr. GOODLATTE. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have heard from a number of my local constituents, and I know the chairman is very strongly supportive of the rights of localities and strongly supportive of decentralized government. We have had some conversations about the process here, and I wonder if I may get a clarification.

Is my understanding correct that the gentleman is committed in the conference process to offer new language that will make it crystal clear that localities will have the authority to determine where these poles are placed in their community so long as they do not exclude the placement of poles altogether, do not unnecessarily delay the process for that purpose, do not favor one competitor over another and do [illegible] radio frequency emissions which is clearly a Federal issue? Is that an accurate statement of your intention?

Mr. GOSS. I am happy to yield to the distinguished chairman.

Mr. BLILEY. That is indeed, and I will certainly work to that end.

Mr. GOODLATTE. Thank you and I look forward to working with the chairman.

Mr. BEILENSON. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, if this bill really deserves a full and open debate, as the gentleman from Georgia has suggested, then why are we taking it up at midnight?

Mr. Speaker, this is a bill that affects the telephone in every home and every workplace in this country. It is a bill that affects every television viewer in this country and a wide array of other telecommunications services, and when does this Congress consider it? At midnight, after a full day of debate on an appropriations bill.

Regardless of your view on this bill, and I think it has some merit, regardless of your view on the substance of the bill, this [illegible] be voted down along with this rule. What an incredible testament to this new Republican leadership that they could take a bill of this vital important to the people of America and not take it up until midnight.

You can roll the votes. That just means there will not be anybody here listening to the debate. You can roll them all night long, as you plan to do. The real question is whether you will [illegible] American consumer.

Mr. LINDER. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I want to rise in support of the rule. I think this is a good rule.

Mr. Speaker, I want to point out to my colleagues that if this were a software package that would be version 5 or 6. We have been working on this issue for the last 4 years in this Congress. We had a bill pass the House; we never went to conference with the Senate last year.

There is one amendment that has been made in order, a bipartisan amendment, the Stupak-Barton amendment, that deals directly with local access, local control of rights-of-way for the cities that is very bipartisan in nature, and I would urge support of that amendment if we can reach agreement on it, which we are still working on that.

So this is a good rule, I want to thank the Committee on Rules for making Stupak-Barton in order, and I would urge Members to vote for the rule.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Michigan [Mr. DINGELL], the ranking member of the committee.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

□ 2215

Mr. DINGELL. Mr. Speaker, I rise in support of the rule. I urge my colleagues to vote for it. H.R. 1555 is a complex bill. It deals with a complex industry. It comprises a substantial portion of the American economy.

There are a lot of controversies in this legislation, and it should not be dealt with cavalierly. It is a matter of some regret to me we are proceeding late at night and that we have not had more time for this. But, nonetheless, the bill that would be put on the floor by the rule resolves many important questions, and it pulls out of a courtroom, where one judge, a couple of law clerks, a gaggle of Justice Department lawyers, and several hotel floors of AT&T lawyers, have been making the entirety of telecommunications policy for the United States since the breakup.

The breakup of AT&T was initiated by its president, Mr. Charley Brown, and it was done because he had gotten tired of having MCI tie him instead of

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(House of Representatives - August 02, 1995)

This V-chip, Mr. Speaker, is based on some very simple principles: That parents raise children, not government, not advertisers, and not network executives, and parents should be the ones to choose what kinds of shows come into their homes.

Second, I believe we should do all we can to keep our airwaves from falling into the hands of the wealthy and the powerful. Current law limits the number of television stations, one per person or media company can reach, to 25 percent of the Nation's households. That rule was established to promote the free exchange of diverse views and ideas. The bill before us today, however, would literally allow one person, in any given area, to own two television stations, unlimited number of radio stations, the local newspaper and local cable systems. Instead of the 25 percent limit under this bill, Rupert Murdock could literally own media outlets that reach to over half of America's households, Mr. Speaker. In other words, this bill allows Mr. Murdock to control what 50 percent of American households read, hear, and see, and that is outrageous.

Mr. Speaker, the gentleman from Massachusetts [Mr. Markey] will offer an amendment to set that limit to 35 percent, and, frankly, I don't think this amendment goes far enough. I believe we need to address broader issues, such as who controls our networks, who controls our newspapers, and who controls our radios.

In conclusion, Mr. Speaker, I would suggest that we would have liked to have seen a tougher amendment, but I urge my colleagues to support the Markey amendment on concentration, and, Mr. Speaker, this bill has been around a long time. It has been a long time in coming, and I urge my colleagues to support the rule.

Mr. LINDER. Mr. speaker, I yield such time as he may consume to the gentleman from Florida [Mr. Goss], my colleague on the Rules Committee.

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, I want to thank the gentleman from Georgia [Mr. **Linder**] and congratulate him for his fine work on an extremely complex rule that took a lot of work to get done, and the gentleman from New York [Mr. **Solomon**] as well, and I am delighted there is support on both sides of the aisle, for it deserves it.

Mr. Speaker, I urge support for the rule also, and I will use my time to indulge in a colloquy with the gentleman from Virginia [Mr. **Bliley**], the honorable chairman of the Committee on Commerce, because two points have come up in discussion today regarding local government authority which I think can be clarified and need to be clarified.

Chairman **Bliley** was Mayor **Bliley** of Richmond, and this gentleman was mayor of a much smaller town, but they were both local governments and there was a great concern among some of our local governments about some issues here, particularly two, as I have said. I want to address the issue of zoning.

Mr. Speaker, as to the cellular industry expanding into the next century, there will be a need for an estimated 100,000 new transmission poles to be constructed throughout the country, I am told. I want to make sure that nothing in H.R. 1555 preempts the ability of local officials to determine the placement and construction of these new towers. Land use has always been, and I believe should continue to be, in the domain of the authorities in the areas directly affected.

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